

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2004 - 0071

APPROVING AN AMENDMENT TO THE WATER QUALITY CONTROL
PLAN FOR THE LOS ANGELES REGION INCORPORATING A TOTAL
MAXIMUM DAILY LOAD FOR BACTERIA AT LOS ANGELES HARBOR

WHEREAS:

1. The Los Angeles Regional Water Quality Control Board (Regional Board) adopted a revised Water Quality Control Plan (Basin Plan) for the Los Angeles region on June 13, 1994, which was approved by the State Water Resources Control Board (SWRCB) on November 17, 1994, and by the Office of Administrative Law (OAL) on February 23, 1995.
2. On July 1, 2004, the Regional Board adopted Resolution No. 2004-011 (Attachment) amending the Basin Plan to incorporate a Total Maximum Daily Load (TMDL) for bacteria at Los Angeles Harbor (Inner Cabrillo Beach and the Main Ship Channel including the Inner Harbor).
3. Regional Board staff prepared documents and followed procedures satisfying environmental documentation requirements in accordance with the California Environmental Quality Act and other State laws and regulations.
4. The Regional Board found and SWRCB finds that the additions of this amendment would result in no adverse effect on wildlife, and the amendment would be consistent with the State Antidegradation Policy (SWRCB Resolution No. 68-16) and federal antidegradation requirements.
5. SWRCB finds that the Basin Plan amendment is in conformance with Water Code section 13240, which specifies that Regional Water Quality Control Boards may revise Basin Plans, and section 13242, which requires a program of implementation of water quality objectives. SWRCB also finds that the Basin Plan amendment is consistent with the requirements of section 303(d) of the Clean Water Act.
6. The TMDL assigns waste load allocations (WLAs) equal to 17 exceedance days unless, to satisfy anti-degradation requirements, the particular water body has consistently had less than 17 days of exceedance. In that event, the WLA was calculated using the number of exceedance days that actually occur during the 90th percentile storm year. A commenter expressed concern that calculating the anti-degradation based exceedance threshold at the 90th percentile storm year would cause the storm water permittees to be out of compliance in any year that is wetter than the 90th percentile storm year. SWRCB finds that the WLAs are not water quality based effluent limitations (WQBELs) and are therefore not directly enforceable against the permittees. The permittees are only required to comply with the WQBELs after their permits have been revised to incorporate the WLAs. WQBELs are only required to be "consistent with the assumptions and requirements" of the WLAs. They need not be identical to them. They could be higher or lower, or the WQBEL may not even be numerical. Accordingly, the commenter's concern about being out of compliance during a year wetter than the 90th percentile storm year is not yet timely, but should be considered during the permit revision process. Further, selecting the 90th percentile storm year for the WLAs is a policy call that the Regional Board, with the subsequent approval of the SWRCB, has used in prior bacteria TMDLs.
7. Several commenters expressed concern that the potential REC-1 beneficial use designation is not appropriate for the Main Ship Channel (MSC), because recreation is neither permitted nor safe in the MSC. The Regional Board replied that a federal consent decree had combined the MSC and Cabrillo Beach (Inner) into a single analytical unit, essentially requiring the Regional Board to address the MSC and Beach in a single bacteria TMDL. The hydrologic connection and proximity of the water bodies makes the coordinated consideration of the two water bodies appropriate. SWRCB finds that a Use Attainability Analysis (UAA) may be an appropriate means to resolve concern over the potential REC-1 use in the MSC. SWRCB further finds that the permittees have been allocated adequate time to conduct a UAA and have it considered, prior to the time that compliance is required under the TMDL.

8. Several commenters argued that the Inner Harbor is not listed on the 303(d) list and therefore should not be subject to this TMDL. SWRCB finds that the Inner Harbor is part of the MSC, which is listed on the 303(d) list. SWRCB also finds that resolving bacterial impairment in the MSC would require control of bacterial sources discharged to the Inner Harbor in any event, and therefore they must be included in the TMDL.
9. A Basin Plan amendment does not become effective until approved by SWRCB and until the regulatory provisions are approved by OAL. Additionally, TMDLs must be approved by the U. S. Environmental Protection Agency (USEPA).

THEREFORE BE IT RESOLVED THAT:

SWRCB:

1. Approves the amendment to the Regional Board Basin Plan to incorporate a TMDL for bacteria at Los Angeles Harbor as approved in Regional Board Resolution No. 2004-011.
2. Authorizes the Executive Director or designee to transmit the amendment and administrative record for this action to OAL and the TMDL to USEPA for approval.
3. SWRCB directs the Regional Board to consider the results of any UAA conducted in response to finding No. 7, and to take any appropriate action thereon.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 21, 2004.


Debbie Irvin
Clerk to the Board